

UNITED STATES OF AMERICA, )  
 )  
 ) CRIMINAL ACTION NO.  
 v. ) 2:17cr100-MHT  
 ) (WO)  
 JAMES CALVIN TALLEY, JR. )

This cause is before the court on defendant James Calvin Talley, Jr.'s unopposed motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for December 4, 2017, should be continued pursuant to 18 U.S.C. § 3161(h) (7).

While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Talley in a speedy trial. As stated in the motion to continue, defense counsel was involved in an automobile accident with an 18-wheel

semi-truck on November 15, 2017. Counsel sustained a fractured clavicle and other injuries, and was directed not to return to work for at least seven days. She continues to undergo treatment for the injuries she sustained, and is not driving due to the trauma associated with the accident. Given her ongoing health problems, the current December 4 trial date does not provide counsel adequate time to be physically healed and otherwise prepared for trial. Talley requests a continuance in order for defense counsel to heal and prepare adequately for trial. The court further notes that the stakes in this case are particularly high, in that the parties agree Talley faces potential life imprisonment without parole if convicted. Accordingly, a continuance is warranted.

The government does not object to a continuance.

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Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant James Calvin Talley, Jr. (doc. no. 134) is granted.

(2) The jury selection and trial, now set for December 4, 2017, are reset for January 16, 2018, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 27th day of November, 2017.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE